

IN THE CIRCUIT COURT OF
BARBOUR COUNTY, ALABAMA
CLAYTON DIVISION

**GARY WILLIS and
GINA WILLIS**

Plaintiffs,

VS.

**FREEDOM MORTGAGE
CORPORATION; et al.,**

Defendants.

[illegible]

CV-2004-35

**OBJECTION TO DEFENANT'S MOTION TO
AMEND ANSWER TO ADD AFFIRMATIVE DEFENSE**

Come now the Plaintiffs, and file this objection to Defendant's Motion to amend their Answer to add the affirmative defense of the statute of frauds and as grounds therefore show as follows:

1. This case has been pending for more than a year and Defendant has had ample opportunity to plead any defenses.

2. The Plaintiffs took a deposition of the 30(b)(6) representative of the Defendant on April 13, 2005 in New Jersey. Allowing the Defendant to add this defense at this late date would unduly prejudice the Plaintiffs in that they were not allowed the opportunity to question the Defendant concerning this defense in that they had no notice that the Defendant would attempt to raise this defense. An affirmative defense must be pleaded in a timely manner or it is deemed waived. Pierce v. Hand, Arendall, Bledsoe, Graves & Johnston, 678 So. 2d 765, 769 (Ala. 1996); Giles v. Ingram, 583 So. 2d 1287 (Ala. 1991).

Attachment J

3. This case is set for trial during the term of court commencing June 7, 2005. Allowing the Defendant to add a defense at this late date, which the Plaintiffs have not been able to question the Defendant concerning the defense is unduly prejudicial to Plaintiffs and should be disallowed.

WHEREFORE, the Plaintiffs move the Court to deny Defendant's Motion to amend to add an affirmative defense heretofore unpled.


RONALD G. DAVENPORT (DAV044)
Attorneys for Plaintiffs

OF COUNSEL:
RUSHTON, STAKELY, JOHNSTON
& GARRETT, P.A.
184 Commerce Street
Post Office Box 270
Montgomery, Alabama 36101-0270
(334) 206-3100

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing mail the all counsel of record by placing a copy thereof, in the United States mail, postage prepaid, on this the 26TH day of April, 2005, and properly addressed as follows:

Cliff Slaten, Esq.
Slaten & O'Connor, P.C.
105 Tallapoosa Street
Suite 101
Montgomery, Alabama 36104


Of Counsel